

**IN THE HIGH COURT OF JUDICATURE AT  
MADRAS**

**DATED : 25.04.2012**

**CORAM**

**THE HONOURABLE MR.JUSTICE  
K.CHANDRU**

**W.P.Nos.9763 of 2008, 24746 of 2009,  
16041,  
17738 and 17739 of 2010  
and  
M.P.Nos.1,1 and 1 of 2010**

The Rasipuram Cooperative Urban Bank Ltd.,  
rep by its General Manager,  
No.58,Nagara Vanki Street,  
Rasipuram-637 408  
Namakkal District.  
W.P.No.9763 of 2008

.. Petitioner in

The Public Information Officer,  
O/o.The Illayankudi Cooperative Urban Bank Ltd.,  
No.349, Kamarajar Road,  
Illayankudi-630 702,  
Sivagangai District.  
W.P.No.24746 of 2009

.. Petitioner in

The General Manager,  
The Illayankudi Cooperative Urban Bank Ltd.,  
No.349, Kamarajar Road,  
Illayankudi-630 702,  
Sivagangai District.

.. Petitioner in

W.P.Nos.16041, 17738 and  
17739 of 2010

Vs.

1.The Deputy Registrar of Cooperative Societies,  
Namakkal Circle,  
Namakkal.

2.The Deputy Registrar / Special Officer,  
Rasipuram Cooperative Urban Bank Ltd.,  
Rasipuram, Namakkal District.

3.Nalvenai. Viswaraj.

.. Respondents in  
W.P.No.9763 of 2008

1.The Registrar,  
Tamilnadu Information Commission,  
No.37, Anna Salai, Teynampet,  
Chennai-18.

2.The Public Information Officer,  
O/o.The Joint Registrar of Cooperative Societies,  
Madurai Road,  
Sivagangai District.

3.S.P.S.Zafurallah.

.. Respondents in  
W.P.No.24746 of 2009

K.M.Akbar Ali

.. Respondent in  
W.P.Nos.16041, 17738 and  
17739 of 2010

W.P.No.9763 of 2008 is preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorari to call for the records of the first respondent in his Na.Ka.No.6388/07 Pa.Tho(11), dated 25.02.2008 and consequential proceedings of the second respondent dated 18.3.2008 and quash the same by declaring that the petitioner Bank is not a public authority as defined under Section 2(h) of the RTI Act.

W.P.No.24746 of 2009 is preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorari to call

for the records of the first respondent in Case No.14378/Enquiry/09, dated 16.11.2009 and quash the same.

W.P.No.16041 of 2010 is preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorari to call for the records of the Tamil Nadu Information Commission in Case No.1001814/Enquiry/2010, dated 16.6.2010 and quash the same by declaring that the petitioner bank is not a public authority as defined under Section 2(h) of the RTI Act.

W.P.Nos.17738 and 17739 of 2010 are preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorari to call for the records of the Tamil Nadu Information Commission, Chennai-18 in Case No.5314/Enquiry/2010 and No.5848/Enquiry/2010, dated 23.07.2010 and quash the same by declaring that the petitioner bank is not a public authority as defined under Section 2(h) of the RTI Act.

For Petitioners : Mr.R.Muthukumarasamy, SC  
for Mr.M.S.Palaniswamy in all writ petitions

For Respondents : Mr.E.M.S.Natarajan, GA for RR1 and 2  
in W.P.No.9763 of 2008  
for R-2 in W.P.No.24746 of 2009

Mr.R.Nalliyappan for R-3  
in W.P.No.9763 of 2008

Mr.Vivek Sriram for M/s.G.R.Associates  
for R-1 in W.P.No.24746 of 2009  
for respondent in W.P.Nos.16041, 17738  
and 17739 of 2010

Mr.R.Venkatavaradan  
for R-3 in W.P.No.24746 of 2009

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**COMMON ORDER**

The only question arises in these five writ petitions is whether a Cooperative Society registered under the Tamil Nadu Cooperative Societies Act, 1983 is a "public authority" within a meaning of Section 2(h) of the Right to Information Act, 2005 (for short RTI Act)?

2.The first writ petition in W.P.No.9763 of 2008 is filed by Rasipuram Cooperative Urban Bank Limited. The other four writ petitions were filed by Illayankudi Cooperative Urban Bank Limited. In the first writ petition, initially the challenge was to the order passed by the Deputy Registrar of Cooperative Societies dated 25.02.2008. By the aforesaid order, the first respondent acting as an appellate authority under the RTI Act had directed the petitioner bank to provide information to the third respondent who is an Advocate. That writ petition was admitted on 22.04.2008. Pending the writ petition, an interim stay was granted.

3.In the second writ petition (W.P.No.24746 of 2009), initially, the challenge was to the order of the Tamil Nadu Information Commission, dated 16.11.2009, wherein and by which the Information Commission had overruled the petitioner Bank's objection that they are not the public authority within the meaning of Section 2(h) of the RTI Act and held that the Cooperative society was controlled by the Special Officer appointed by the State Government. Therefore, it will come within the purview of the Act. That writ petition was admitted on 1.7.2010. Pending the writ petition, an interim stay was also granted.

4.The third writ petition, i.e., W.P.No.16041 of 2010, challenges the notice issued by the Tamil Nadu Information Commission overruling their objection about non coverage under the RTI Act and

directed them to appear for an enquiry. That writ petition was admitted on 26.7.2010. Pending the writ petition, an interim stay was granted. The last two writ petitions (W.P.Nos.17738 and 17739 of 2010) were filed once again challenging the notices of enquiry dated 23.7.2010 issued by the Commission. Both writ petitions were admitted on 11.8.2010 and directed to be posted along with the previous writ petitions filed by the same society. Pending writ petitions, an interim stay was granted. Subsequently, all interim orders were confirmed on 20.04.2012 and the main matters were directed to be posted for hearing. It was at this stage, the petitioners came up with applications to amend the prayer in all writ petitions, praying for a declaration that the petitioners' societies are not "public authority" within the meaning of Section 2(h) of the RTI Act. Those amendments were ordered on 25.4.2012.

5.Heard the arguments of Mr.R.Muthukumaraswamy, learned Senior Counsel leading Mr.M.S.Palanisamy, learned counsel appearing for petitioners societies, Mr.E.M.S.Natarajan, learned Government Advocate appearing for the authority under the Cooperative Societies Act, Mr.R.Nalliappan, learned counsel appearing for contesting respondent in W.P.No.9763 of 2008, Mr.R.Venkatavaradan, learned counsel for third respondent in W.P.No.24746 of 2009 and Mr.Vivek Sriram for M/s.G.R.Associates, learned counsel appearing for first respondent in W.P.No.24746 of 2009 and for contesting respondents in other three writ petitions.

6.Since the prayer is for declaration that the societies are not covered under Section 2(h) of the RTI Act, it is necessary to extract Section 2(h) of the RTI Act, which reads as follows:

“(h) “public authority” means any authority or body or institution of self-government established or constituted”

(a) by or under the Constitution;

(b) by any other law made by Parliament;

(c) by any other law made by State Legislature;

(d) by notification issued or order made by the appropriate Government, and includes any□

(i) body owned, controlled or substantially financed;

(ii) non-government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government;□

(Emphasis added)

7. Already this court in its judgment in A.C.Sekar Vs. Deputy Registrar of Co-operative Societies, Thiruvannamalai District and others reported in 2008 (2) MLJ 733 has held that cooperative societies are covered by the provisions of the RTI Act and they must disclose the informations available with them to any information seeker. The same principle was applied to the subsequent writ petitions came up in respect of cooperative societies. Notwithstanding the same, the learned counsel for the petitioners argued that the other High Courts have taken a different view and therefore, the question requires fresh consideration.

8. Mr. Muthukumaraswamy, learned Senior Counsel referred to a judgment of the Karnataka High Court in ILR 2008 (Kar) 4105 in W.P.No.16901 of 2006 between Dattaprasad Cooperative Housing Society Ltd. Vs. Karnataka State Chief Information Commissioner,

Bangalore and another), dated 30.6.2008 and argued that cooperative societies cannot be a public authority under the RTI Act. In that case, in paragraph 7, the Karnataka High Court had observed as follows:

□7.As per sub-clause (d) of Clause (h) of Section 2 of the RTI Act, the appropriate government can include an institution within the scope of public authority, provided it is owned, controlled or substantially financed, directly or indirectly funded by the appropriate Government. In the instant case petitioner/society is neither owned nor funded nor controlled by the State. It is not the case of the State that the notification dated 22.9.2005 (Annexure-B) has been issued under Section 2(h)(d) of the RTI Act. Solely on the basis of supervision and control by the Registrar of societies; and the definition of 'public Servant' in the co-operative societies and in the Karnataka Lokayukta Act, 1984 a society cannot be termed as 'Public authority'. So as to include a society within the definition of the term 'Public authority', it should fulfill the conditions stipulated in sub-clause (d) of clause (h) of section 2 of the RTI Act. The decisions cited by the learned counsel for the petitioner/society fully support the case of the petitioner. The petitioner-society does not fulfill the requisite conditions laid down in sub-clause (d) of clause (h) of section 2 of the Act. Therefore, the petitioner society is not a 'public authority' under the provisions of the RTI Act, 2005. Hence, the directions issued by the Registrar to the petitioner/society, by his communication dated 30.10.2006 by the respondent no.2 at Annexure-'D' are not binding on the petitioner/society.□

9.The same was the view in the subsequent judgment of the Karnataka High Court in W.P.No.7407 of 2006 in a batch cases in

Poornaprajna House Building Cooperative Societies and others Vs. Union of India and another, dated 9.2.2009, wherein the court had followed the earlier order in Dattaprasad Cooperative Housing society Ltd.'s case (cited supra) without any further discussion.

10.The learned Senior Counsel also referred to a judgment of the Bombay High Court in Dr.Panjabrao Deshmukh Urban Cooperative Bank Ltd. Vs. The State Information Commissioner, Vidarbha Region, Nagpur and others reported in AIR 2009 Bombay 75 and in paragraphs 11 and 12, it was held that the Cooperative society is not a public authority within a meaning of Section 2(h) of the RTI Act, which reads as follows:

□11.....He was to first find out whether the petitioner is a □public authority□ within the definition of Section 2(h) of the Right to Information Act. If, yes, then only the Act would be applicable and if, no, the said Act is not applicable.

12..... In view of the fact and legal position discussed earlier, it must be held that the petitioner-Bank is not a □public Authority□ within the meaning of Section 2(h) of the Right to Information Act.□

11.A reading of the judgments of both High Courts did not indicate the provisions of the Cooperative Societies Act under which those societies are functioning. In the present case, the petitioners cooperative societies are registered societies under the Tamil Nadu Cooperative Societies Act, 1983. It is governed by the Act, Rules and directions as well as bylaws of the societies. Those societies were initially formed by members who have contributed shares. They elected their own board of directors. But insofar as Tamil Nadu is



concerned, for the past three decades, there has been no election in terms of the bylaws. On the other hand, the Board of Directors of each society have been superseded and the State Government had directly appointed Special Officers for manning the societies. The Special Officer appointed in the society is a government officer of the Department of Cooperation holding different ranks in the Department. He had virtually replaced the Board of Directors and taking orders only from the authority of the State Government appointed to the department of Cooperation functioning under the control of the Registrar of Cooperative Societies. The latest bill replacing the previous appointment of Special Officers may be usefully reproduced, which reads as follows :

□A Bill further to amend the Tamil Nadu Co-operative Societies (Appointment of Special Officers) Act, 1976.

BE it enacted by the Legislative Assembly of the State of Tamil Nadu in the Sixty-first Year of the Republic of India as follows:□

1.(1) This Act may be called the Tamil Nadu Co-operative Societies (Appointment of Special Officers) Second Amendment Act, 2010.

(2) It shall be deemed to have come into force on the 30th day of July 2010.

2.In section 4 of the Tamil Nadu Co-operative Societies (Appointment of Special Officers) Act, 1976 (hereinafter referred to as the principal Act), in sub-section (1), for the expression □thirty four years and two months□, the expression □thirty four years and eight months□ shall be substituted.

3.(1) The Tamil Nadu Co-operative Societies (Appointment of Special Officers) Second Amendment Ordinance, 2010 is hereby repealed.

(2)Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act, as amended by this Act.□

12.As can be seen from the said provisions, virtually there has been no elected board of directors in the last three decades. Even when the last elections which were announced were cancelled by the Government Order in G.O.(2D)No.76, Cooperation, Food and Consumer Protection Department,, dated 11.7.2007, a division bench of this court headed by A.K.Ganguly, C.J (as he then was) in Dr.P.Rajaji Vs. State of Tamil Nadu, rep by its Secretary to the Government, Cooperation, Food and Consumer Protection Department, Chennai and others reported in (2009) 1 MLJ 31 had frowned upon the cancellation and set aside the Government Order and directed elections to be held to those societies.

13.The learned Senior Counsel strongly placed reliance upon a larger bench judgment of this court in K.Marappan Vs. The Deputy Registrar of Co-operative Societies, Namakkal Circle, Namakkal-636 001 and another reported in 2006 (4) CTC 689 for contending that it has been held that the cooperative society registered under the Cooperative Societies Act is neither a State nor an instrumentality of the State and hence not amenable to writ jurisdiction of this court. But however, when the matter relating to Justine Vs. Registrar of Co-operative Societies and others reported in 2002 (4) CTC 385 went to

the Supreme Court, the Supreme Court though had an occasion to consider whether a Cooperative Society is a "State" within the meaning of Article 12 and hence did not express any opinion vide its judgment in *A. Umarani v. Registrar, Coop. Societies* reported in (2004) 7 SCC 112. In paragraph 60, it was held as follows :

¶60. Although we do not intend to express any opinion as to whether the cooperative society is a "State" within the meaning of Article 12 of the Constitution of India but it is beyond any cavil of doubt that the writ petition will be maintainable when the action of the cooperative society is violative of mandatory statutory provisions. In this case except the nodal centre functions and supervision of the cooperative society, the State has no administrative control over its day-to-day affairs. The State has not created any post nor could it do so on its own. The State has not borne any part of the financial burden.....¶

14. The Supreme Court subsequently in *Madhya Pradesh State Cooperative Dairy Federation Limited v. Rajnesh Kumar Jamindar* reported in (2009) 15 SCC 221 held that Madhya Pradesh State Cooperative Dairy Federation is a State within the meaning of Article 12 of the Constitution and in paragraph 32, it was observed as follows :

¶32. We have noticed the history of the Federation. It was a part of the department of the Government. It not only carries on commercial activities, it works for achieving the better economic development of a section of the people. It seeks to achieve the principles laid down in Article 47 of the Constitution of India viz. nutritional value and health. It undertakes training and research work. Guidelines issued by it are binding on the societies. It monitors the functioning of the societies

under it. It is an apex body. We, therefore, are of the opinion that the appellant herein would come within the purview of the definition of "State" as contained in Article 12 of the Constitution of India.

15. Even earlier, the Supreme Court in *Gayatri De v. Mousumi Coop. Housing Society Ltd.*, reported in (2004) 5 SCC 90 held that if a Special Officer is appointed by the Court, any cooperative society is amenable to writ jurisdiction of this court. It is necessary to extract paragraphs 47 and 55 of the said judgment, which reads as follows:

"47. The appellant herein filed a writ petition in question in the nature of mandamus commanding the respondent therein not to give effect to the letter dated 1-11-1988 issued by the Special Officer of the Society and to forbear from acting on the basis thereof and pursuant thereto. Thus it is seen that since the subject-matter of the writ petition is the order passed by the Special Officer in discharging of his statutory functions, the writ petition is maintainable in law. The Special Officer is appointed under the provisions of the Act and as such he is a statutory officer and, therefore, he should be regarded as a public authority. Apart from that, Article 226 of the Constitution is not confined to issue of writ only to a public authority, the power extends also to issue directions to any person. In our opinion, in a case where the cooperative society is under the control of a Special Officer, a writ would lie.

55.....the Special Officer was appointed by the High Court to discharge the functions of the Society, therefore, he should be regarded as a public authority and hence, the writ petition is maintainable."

16.As to whether a cooperative society can be considered to come within the ambit of Article 12 came to be considered by the Supreme Court in S.S. Rana v. Registrar, Coop. Societies reported in (2006) 11 SCC 634 and in paragraphs 10,12 and 13, it was held as follows:

□10.It has not been shown before us that the State exercises any direct or indirect control over the affairs of the Society for deep and pervasive control. The State furthermore is not the majority shareholder. The State has the power only to nominate one Director. It cannot, thus, be said that the State exercises any functional control over the affairs of the Society in the sense that the majority Directors are nominated by the State. For arriving at the conclusion that the State has a deep and pervasive control over the Society, several other relevant questions are required to be considered, namely, (1) How was the Society created? (2) Whether it enjoys any monopoly character? (3) Do the functions of the Society partake to statutory functions or public functions? and (4) Can it be characterised as public authority?

12.It is well settled that general regulations under an Act, like the Companies Act or the Cooperative Societies Act, would not render the activities of a company or a society as subject to control of the State. Such control in terms of the provisions of the Act are meant to ensure proper functioning of the society and the State or statutory authorities would have nothing to do with its day-to-day functions.

13.The decision of the seven-Judge Bench of this Court in Pradeep Kumar Biswas<sup>1</sup> whereupon strong reliance has been placed, has no application in the instant case. In that case, the Bench was deciding a question as to whether in view of the subsequent decisions of this Court, the law was correctly laid down in Sabhajit Tewary v. Union of India<sup>4</sup> and if not whether the same deserved to be overruled. The

majority opined that the Council of Scientific and Industrial Research (CSIR) was "State" within the meaning of Article 12 of the Constitution of India. This Court noticed the history of the formation thereof, its objects and functions, its management and control as also the extent of financial aid received by it. Apart from the said fact it was noticed by reason of an appropriate notification issued by the Central Government that CSIR was amenable to the jurisdiction of the Central Administrative Tribunal in terms of Section 14(2) of the Administrative Tribunals Act, 1985. It was on the aforementioned premises, this Court opined that Sabhajit Tewary<sup>4</sup> did not lay down the correct law. This Court reiterated the following six tests laid down in *Ajay Hasia v. Khalid Mujib Sehravardi*<sup>2</sup>: (Pradeep Kumar Biswas case<sup>1</sup>, SCC pp. 149-50, para 85)

□(1) One thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government.

(2) Where the financial assistance of the State is so much as to meet almost the entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character.

(3) It may also be a relevant factor □ whether the corporation enjoys monopoly status which is State-conferred or State-protected.

(4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality.

(5) If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government.

(6) □ Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference □ of the corporation being an instrumentality or agency of Government. □

This Court further held: (Pradeep Kumar Biswas case<sup>1</sup>, SCC p. 134, para 40)

□ 40. The picture that ultimately emerges is that the tests formulated in *Ajay Hasia*<sup>2</sup> are not a rigid set of principles so that if a body falls within any one of them it must, *ex hypothesi*, be considered to be a State within the meaning of Article 12. The question in each case would be □ whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory, whether under statute or otherwise, it would not serve to make the body a State. □

(emphasis supplied)

17. It has also been held by the Supreme Court in *General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur, U.P. v. Satrugan Nishad* reported in (2003) 8 SCC 639 in paragraph 8 as follows :

□ 8. From the decisions referred to above, it would be clear that the form in which the body is constituted, namely, whether it is a society or a cooperative society or a company, is not decisive. The real status of the body with respect to the control of Government would have to be looked into. The various tests, as indicated above, would have to be applied and considered cumulatively. There can be no hard-and-fast formula and in different facts/situations, different factors may be found

to be overwhelming and indicating that the body is an authority under Article 12 of the Constitution.....□

18.A cumulative reading of the above judgments will show that the nature of State intervention will decide the question as to whether a cooperative society is amenable to writ jurisdiction or not. But in the present case, this court is not concerned with the amenability of the writ jurisdiction against the cooperative societies. On the other hand, the only issue is whether it is a □public authority□ within a meaning of Section 2(h)(d) of the RTI Act. Therefore if a body is controlled by the appropriate Government, it can be held to be a public authority. Therefore, when the cooperative society is manned by the Government appointed officer to run the affairs of the society, it can certainly be said to be the control exercised by the State. Apart from that under Section 80, the Registrar has got power to conduct an Audit. Under Section 87, if the result of the audit discloses any defects, the Registrar of the Society should take steps to remedy the defects. Similarly under Section 81, an enquiry can be directed to be conducted against any society by the order of the Registrar and the Registrar upon the report can direct the registered society or any officer of the society to take an action as may be specified in the order to remedy the defects pointed out.

19.Under Section 82, power of inspection and investigation is given to the Registrar and that the cost of the enquiry and inspection has to be borne by the society. During the course of the audit under Section 80 or enquiry under Section 81 or inspection and investigation under Section 82, a surcharge proceedings can be initiated against any person who is in management of the society including the servants of



the society under Section 87. The Board of cooperative societies can be superseded by the Registrar under Section 88. Under certain contingencies, a Special Officer can be appointed under Section 89. Any dispute between members and the cooperative society can be taken up for an arbitration before the arbitral officer appointed under Section 90. Under Section 137, a cooperative society can be wound up and a liquidator can be appointed under Section 138. Under Section 74, recruitment bureaus can be appointed by the State Government for recruiting employees to cooperative societies. Under Section 75, a common cadre service can be constituted by the State Government comprising the employees of various cooperative societies. In case of constitution of such common cadre, the power to take action against such officer coming under the common cadre will vest only with the common cadre authority. Under Section 153, the revisional authority can take an action either on complaints or suo motu to correct the action taken by a cooperative society. The competent authority also got further power to review under Section 154. Under Section 181, the Registrar can give direction to the cooperative society in public interest and societies are bound to carry out such directions. Similarly, the State Government has power to give direction under Section 182. Under Rule 149 of the Tamil Nadu Cooperative Societies Rules, 1988, the societies will have to make special bylaws relating to service conditions of its employees and it is subject to prior approval of the Registrar.

20. A cumulative reading of these provisions coupled with the virtual manning of societies by the State appointed Special Officers will clearly show that the Cooperative societies are controlled by the Government and will be a "public authority" within a meaning of

Section 2(h)(d)(i) of the RTI Act. The decisions of the Karnataka and Bombay High Courts, as noted already, did not discuss with the provisions found peculiarly in the Tamil Nadu Act.

21.The learned Senior Counsel contended that the provisions are regulatory in nature and will not amount to control. One distinguishing factor is that for over three decades, the societies are virtually under the control of the State appointed Special Officers. Therefore, it cannot be said that societies are not controlled by the State Government and were immune from the provisions of the RTI Act. Hence this court is not able to agree with the reasonings found in the judgments of the Karnataka and Bombay High Courts (cited supra). On the other hand, the peculiar features of the Tamil Nadu Cooperative Societies Act, 1983 set out above will clearly show that cooperative societies are controlled by the State Government. Hence it is a public authority. Therefore, there is no reason to reconsider the decision of this court in A.C.Sekar's case (cited supra).

22.The purpose of the RTI Act has been set out by the Supreme Court in its recent judgment in CBSE v. Aditya Bandopadhyay reported in (2011) 8 SCC 497 and in paragraph 66 it was observed as follows :

□66.The right to information is a cherished right. Information and right to information are intended to be formidable tools in the hands of responsible citizens to fight corruption and to bring in transparency and accountability. The provisions of the RTI Act should be enforced strictly and all efforts should be made to bring to light the necessary information under clause (b) of Section 4(1) of the Act which relates to securing transparency and accountability in the working of public authorities and in discouraging corruption. But in regard to other

information [that is, information other than those enumerated in Sections 4(1)(b) and (c) of the Act], equal importance and emphasis are given to other public interests (like confidentiality of sensitive information, fidelity and fiduciary relationships, efficient operation of Governments, etc.).□

23. Very recently, the Supreme Court in *Chief Information Commissioner and another Vs. State of Manipur* reported in 2012 AIR SCW 651, considered the scope and purpose of the RTI Act and in paragraphs 6 to 17, it was observed as follows:

□6. Before dealing with controversy in this case, let us consider the object and purpose of the Act and the evolving mosaic of jurisprudential thinking which virtually led to its enactment in 2005.

7. As its preamble shows the Act was enacted to promote transparency and accountability in the working of every public authority in order to strengthen the core constitutional values of a democratic republic. It is clear that the Parliament enacted the said Act keeping in mind the rights of an informed citizenry in which transparency of information is vital in curbing corruption and making the Government and its instrumentalities accountable. The Act is meant to harmonise the conflicting interests of Government to preserve the confidentiality of sensitive information with the right of citizens to know the functioning of the governmental process in such a way as to preserve the paramountcy of the democratic ideal.

8. The preamble would obviously show that the Act is based on the concept of an open society.

9. On the emerging concept of an 'open Government', about more than three decades ago, the Constitution Bench of this Court in *The State of Uttar Pradesh v. Raj Narain & others* - AIR 1975 SC 865 speaking through Justice Mathew held:

"...The people of this country have a right to know every public act, everything, that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security. ... To cover with veil of secrecy, the common routine business, is not in the interest of the public. Such secrecy can seldom be legitimately desired." (para 74, page 884)

10. Another Constitution Bench in *S.P. Gupta & Ors. v. President of India and Ors.* (AIR 1982 SC 149) relying on the ratio in *Raj Narain* (supra) held:

"...The concept of an open government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19(1)(a). Therefore, disclosure of information in regard to the functioning of Government must be the rule and secrecy an exception justified only where the strictest requirement of public interest so demands. The approach of the court must be to attenuate the area of secrecy as much as possible consistently with the requirement of public interest, bearing in mind all the time that disclosure also serves an important aspect of public interest..."

(para 66, page 234)

11.It is, therefore, clear from the ratio in the above decisions of the Constitution Bench of this Court that the right to information, which is basically founded on the right to know, is an intrinsic part of the fundamental right to free speech and expression guaranteed under Article 19(1)(a) of the Constitution. The said Act was, thus, enacted to consolidate the fundamental right of free speech.

12.In *Secretary, Ministry of Information & Broadcasting, Govt. of India and Ors. v. Cricket Association of Bengal and Ors.* - (1995) 2 SCC 161, this Court also held that right to acquire information and to disseminate it is an intrinsic component of freedom of speech and expression. (See para 43 page 213 of the report).

13. Again in *Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspapers Bombay Pvt. Ltd. & others* - (1988) 4 SCC 592 this Court recognised that the Right to Information is a fundamental right under Article 21 of the Constitution.

14.This Court speaking through Justice Sabyasachi Mukharji, as His Lordship then was, held:

"...We must remember that the people at large have a right to know in order to be able to take part in a participatory development in the industrial life and democracy. Right to know is a basic right which citizens of a free country aspire in the broader horizon of the right to live in this age in our land under Article 21 of our Constitution. That right has reached new dimensions and urgency. That right puts greater

responsibility upon those who take upon themselves the responsibility to inform."

(para 34, page 613 of the report)

15. In *People's Union for Civil Liberties and Anr. v. Union of India and Ors.* - (2004) 2 SCC 476 this Court reiterated, relying on the aforesaid judgments, that right to information is a facet of the right to freedom of "speech and expression" as contained in Article 19(1)(a) of the Constitution of India and also held that right to information is definitely a fundamental right. In coming to this conclusion, this Court traced the origin of the said right from the Universal Declaration of Human Rights, 1948 and also Article 19 of the International Covenant on Civil and Political Rights, which was ratified by India in 1978. This Court also found a similar enunciation of principle in the Declaration of European Convention for the Protection of Human Rights (1950) and found that the spirit of the Universal Declaration of 1948 is echoed in Article 19(1)(a) of the Constitution. (See paras 45, 46 & 47 at page 495 of the report)

16. The exercise of judicial discretion in favour of free speech is not only peculiar to our jurisprudence, the same is a part of the jurisprudence in all the countries which are governed by rule of law with an independent judiciary. In this connection, if we may quote what Lord Acton said in one of his speeches:

"Everything secret degenerates, even the administration of justice; nothing is safe that does not show how it can bear discussion and publicity"

17.It is, therefore, clear that a society which adopts openness as a value of overarching significance not only permits its citizens a wide range of freedom of expression, it also goes further in actually opening up the deliberative process of the Government itself to the sunlight of public scrutiny.□

24.In the light of these facts, all the writ petitions will clearly fail and accordingly, they will stand dismissed. Wherever the order of the Tamil Nadu Information Commission has become final, the petitioners societies are directed to comply with the same. Wherever notices issued by the Tamil Nadu Information Commission are under challenge, it is open to the Tamil Nadu Information Commission to proceed to decide the matter in accordance with law after due notice to parties. No costs. Consequently connected miscellaneous petitions stand closed.

**To**

- 1.The Deputy Registrar of Cooperative Societies,  
Namakkal Circle,  
Namakkal.**
- 2.The Deputy Registrar / Special Officer,  
Rasipuram Cooperative Urban Bank Ltd.,  
Rasipuram, Namakkal District.**
- 3.The Registrar,  
Tamilnadu Information Commission,  
No.37, Anna Salai, Teynampet,  
Chennai-18.**
- 4.The Public Information Officer,  
O/o.The Joint Registrar of Cooperative Societies,  
Madurai Road,**

## **Sivagangai District**